

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Herbert Huettlin
Application No. 10/823,926	Filing Date: April 14, 2004
Title of Application:	Process and Apparatus for Treating Particulate a Material
Confirmation No. 5298	Art Unit: 1734
Examiner	Laura Edwards

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 CFR §41.37

Dear Sir:

A Notice of Appeal from the final rejection mailed June 3, 2008, of Claims 7, 8 and 10-29, 31, and 35 of U.S. Patent Application No. 10/823,926 was filed on August 28, 2008. Appellant accordingly files its Appeal Brief in connection with this Appeal. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

(i) Real Party In Interest

The real party in interest is Herbert Huettlin.

(ii) Related Appeals and Interferences

There are no related Appeals or Interferences.

(iii) Status Of Claims

Claims 7, 8 and 10-29, 31, and 35 stand rejected and are the subject of the instant Appeal. Claims 1-6 and 9 have been cancelled. Claims 30 and 32-34 have been allowed. A copy of each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

No Amendments have been filed since the Final Office Action was mailed on June 3, 2008.

(v) Summary Of Claimed Subject Matter

Independent Claim 7

Claim 7 is directed toward an apparatus (10) for treating a particulate material (12) comprising a container (14) with a base (18), an upright wall (16) widening in an upward direction, and a deflection element (20) adjoining the upright wall (16) in an upper region (28) of the container (14) in order to deflect a direction of movement of the material. (p. 18, par. [0078-0081], Fig. 1). The upright wall (16) is rotatable about a vertical axis (22) of rotation. (p. 18, par. [0081], Fig. 1). The apparatus (10) has an

opening (136) for placing particulate material in to the container (14). (p. 25, par. [00116], p. 28, par. [00126], Fig. 1, Fig. 3). The apparatus (10) has a first air gap (34, 36) in an upper portion (28) of the wall that transitions from the upright wall (16) to the deflection element (20, 52, 56). (p. 19, par. [0086], p. 20, par. [0089], [0093], Fig. 1, Fig. 2). The apparatus (10) has an air feed device (38, 40, 42) for feeding an air stream (44, 46) through the first air gap (34, 36) into the container (14). (p. 19, par. [0087], Fig. 1, Fig. 2). Either the first air gap (34, 36) or the air feed device (38, 40, 42) are configured such that the air stream (44, 46) introduced through the first air gap (34, 36) has a flow component (48, 50) oriented substantially in an upward direction and, in a region adjoining the air gap, oriented substantially tangentially with respect to at least one of the wall and the deflection element. (p. 4-5, par. [0014], p. 19-20, par. [0088], Fig. 1, Fig. 2).

Independent Claim 30

Claim 30 is directed toward an apparatus (10) for treating a particulate material (12) comprising a container (14) with a base (18), an upright wall (16) widening in an upward direction, and a deflection element (20) adjoining the upright wall (16) in an upper region (28) of the container (14) in order to deflect a direction of movement of the material. (p. 18, par. [0078-0081], Fig. 1). The upright wall (16) is rotatable about a vertical axis (22) of rotation. (p. 18, par. [0081], Fig. 1). The apparatus (10) has an opening (136) for placing particulate material in to the container (14). (p. 25, par. [00116], p. 28, par. [00126], Fig. 1, Fig. 3). The apparatus (10) has a first air gap (34) in an upper portion (28) of the wall that transitions from the upright wall (16) to the deflection element (20, 52, 56). (p. 19, par. [0086], p. 20, par. [0089], [0093], Fig. 1, Fig. 2). The apparatus (10) has an air feed device (38, 40) for feeding an air stream (44) through the first air gap (34) into the container (14). (p. 19, par. [0087], Fig. 1, Fig. 2). Either the first air gap (34) or the air feed device (38, 40) are configured such that the air

stream (44) introduced through the first air gap (34) has a flow component (48) oriented substantially in an upward direction and, in a region adjoining the air gap, oriented substantially tangentially with respect to at least one of the wall and the deflection element. (p. 4-5, par. [0014], p. 19-20, par. [0088], Fig. 1, Fig. 2). The apparatus a second air gap (36) which is spaced apart vertically from the first air gap (34). (p. 19, par. [0086], Fig. 1, Fig. 2). The air feed device has a first feed duct (40) for feeding a first air stream (44) to said first air gap (34), and at least a second feed duct (42), separated from said first feed duct (40), for feeding a second air stream (46) to said second air gap (36). (p. 19, par. [0087], Fig. 1, Fig. 2).

Independent Claim 35

Claim 35 is directed toward an apparatus (10) for treating a particulate material (12) comprising a container (14) with a base (18), an upright wall (16) widening in an upward direction, and a deflection element (20) adjoining the upright wall (16) in an upper region (28) of the container (14) in order to deflect a direction of movement of the material. (p. 18, par. [0078-0081], Fig. 1). The upright wall (16) is rotatable about a vertical axis (22) of rotation. (p. 18, par. [0081], Fig. 1). The apparatus (10) has an opening (136) for placing particulate material in to the container (14). (p. 25, par. [00116], p. 28, par. [00126], Fig. 1, Fig. 3). The apparatus (10) has a first air gap (34, 36) in an upper portion (28) of the wall that transitions from the upright wall (16) to the deflection element (20, 52, 56). (p. 19, par. [0086], p. 20, par. [0089], [0093], Fig. 1, Fig. 2). The first air gap (34, 36) forms either an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation. (p. 6, par. [0017], p. 20, par. [0090], p. 22, par. [00101], Fig. 1, Fig. 2). The apparatus (10) has an air feed device (38, 40, 42) for feeding an air stream (44, 46) through the first air gap (34, 36) into the container (14). (p. 19, par. [0087], Fig. 1, Fig. 2). Either the first air gap (34, 36) or the air feed device (38, 40, 42) are configured such that the air stream (44, 46) introduced through the first

air gap (34, 36) has a flow component (48, 50) oriented substantially in an upward direction and, in a region adjoining the air gap, oriented substantially tangentially with respect to at least one of the wall and the deflection element. (p. 4-5, par. [0014], p. 19-20, par. [0088], Fig. 1, Fig. 2).

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claim 35 is rejected under 35 U.S.C 112, first paragraph, as failing to comply with the written description requirement.

Claims 31 and 35 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 10-12, 16-20, 23-25, 29, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huettlin (WO00/10699) (hereinafter "WO '699") in view of Pace (US 5,180,358) (hereinafter "Pace") in view of reasons set forth in the Examiner's Office Action of October 31, 2007. Claims 8, 13-15, and 26-28 are objected to as being dependent upon a rejected based claim, but are allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '699 in view of Pace as applied to claim 7 and further in view of Huettlin (DE 10104184) for reasons set forth in the Examiner's Office Action of October 31, 2007.

(vii) Argument

A. Claim 35 : 35 U.S.C 112, first paragraph, rejection.

The Examiner has rejected claim 35 under 35 U.S.C. 112, first paragraph, and asserts that claim 35 does not comply with the written description requirement. Specifically, the Examiner asserts that the recitation of: “said first air gap forming either an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation”, in claim 35 is not supported by the specification as originally filed and therefore constitutes new matter. However, Appellant respectfully submits that claim 35 is in fact supported by the specification as filed and is not new matter.

The specification discloses that it is an object of the invention to provide an apparatus for treating a particulate material. (p. 5, par. [0015]). The apparatus includes at least one air gap, as recited in the claims, and the “at least one air gap preferably extends interruptedly or uninterruptedly over the full circumference of the contain.” (p. 6, par. [0017]). Thus, the recitation in claim 35 of: “said first air gap forming either an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation”, is supported by the specification as filed and is not new matter.

Accordingly, Appellant respectfully requests that the Examiner’s rejection of claim 35 under 35 U.S.C. 112, first paragraph, be reversed.

B. Claims 31 and 35 : 35 U.S.C 112, second paragraph, rejection.

i. Claim 31

The Examiner has rejected claim 31 under 35 U.S.C. 112, second paragraph, and asserts that claim 31 is indefinite. Specifically, the Examiner questions whether claim 31 adds any additional structural limitations to claim 30. However, it does.

Claim 30 states that either the first air gap or the air feed device are configured such that the “air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said def-

lection element.” Claim 31 on the other hand states that either the second air gap or the air feed device are configured such that the “an air stream fed in by said air feed device has a flow component oriented substantially in an upward direction and, in a region adjoining said second air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.” Thus, claim 31 provides a limitation with respect to the structure of the second air gap or the air feed device with respect to a flow component in the region adjoin the second air gap. This limitation is not recited or required by claim 30.

Accordingly, Appellant respectfully requests that the Examiner's rejection of claim 31 under 35 U.S.C. 112, second paragraph, be reversed.

ii. Claim 35

The Examiner has rejected claim 35 under 35 U.S.C. 112, second paragraph, and asserts that claim 35 is indefinite. Specifically, the Examiner asserts that “it is unclear as to what structure is required and/or not required to effect either an interrupted and/or uninterrupted annular gap.” However, the specification discloses the nature of the structure of the annular gap for this limitation. As stated in par. [0017]: “at least one air gap preferably extends interruptedly or uninterruptedly over the full circumference of the container, and the air stream is then preferably introduced through the air gap over the entire circumference.” Thus, an uninterrupted annular gap requires that the first air gap extend about the full circumference of the container without any elements of the container that make the annular gap discontinuous or intermittent about the circumference. The interrupted annular gap requires that the first air gap extend about full circumference of the container but contains elements of the container that make the annular gap discontinuous or intermittent about the circumference.

Accordingly, Appellant respectfully requests that the Examiner's rejection of claim 35 under 35 U.S.C. 112, second paragraph, be reversed.

C. Claims 7, 10-12, 16-20, 23-25 and 29 : 35 U.S.C. 103(a) rejection - Huettlin (WO00/10699) in view of Pace (US 5,180,358) in view of reasons set forth in the Examiner's Office Action of October 31, 2007.

As a preliminary matter, Appellant notes that WO '699 is the publication of PCT Application No. PCT/EP99/05423. U.S. Application No. 09/792,844 is a continuation of PCT Application No. PCT/EP99/05423 and is Published as US 2001/0016224 ("Pub '624"). Appellant has referenced Pub '624 for the purpose of identifying the elements disclosed in WO '699.

Claim 7 requires "a first air gap in an upper portion of the wall"; "an air feed device for feeding an air stream through said first air gap into said container"; and that the first air gap or air feed device are "configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element."

WO '699 discloses a container 24 with a bottom 26 and an upstanding wall 28. (Pub '624 par [0098]). The container 24 has an upper edge 42 of the wall 28 "drawn in and radially inwardly curved." (Pub '624 par [0103]). "The upper edge 42 of wall 28 is fixedly connected to an annular guide element 44 in the form of a plate configured as a collar, which is spaced radially inwardly from the wall in the upper region of the wall 28." (Pub '624 par [0104]). "A conical element 48 is also arranged in the container 24 which is fixedly connected to the upper portion of the housing by four carrier plates 50 disposed about the circumference." (Pub '624 par [0106]). "The conical element 48 is open to the top and comprises a return surface 52 for the material 12." (Pub '624 par [0107]). Process air is introduced through "supplying means 66 include a supplying channel 68 which opens below the bottom 26 of the container 24. The process air is introduced from the outside through the housing 14, where the flow direction is illustrated in FIG. 1 by wide arrows 70." (Pub '624 par [0112]).

As is apparent from the disclosure of WO '699 and as illustrated in Fig. 1, WO '699 does not disclose “a first air gap in an upper portion of the wall”; “an air feed device for feeding an air stream through said first air gap into said container”; and that the first air gap or air feed device are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.” In fact, the Examiner notes that “Huettlin is silent concerning the use of an air gap connected to an air feed device such that air passes through or transitions through an upper portion of the container wall toward the deflection element to introduce air into the container.” (October 31, 2007 Office Action page 4).

The Examiner relies on the gas inlet port 82 or 408 in Pace to satisfy this limitation and concludes that it would be obvious to combine the gas inlet port 82 or 408 in Pace with the device disclosed in WO '699. However, to the extent that the gas inlet port 82 in Pace could be construed as an air gap with an air feed device, Pace still does not disclose “that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.” The gas inlet port 82 in Pace is used to introduce a pressurized gas into the container, in order to increase the pressure within the container. (Pace, col. 10:5-17). Gas inlet port 82 is connected to outer casing member 44 and introduces pressurized gas into the container through a hole in the outer casing member 44. Fig. 1B shows that the gas inlet port 82 is orthogonal to outer casing member 44 and as a result the flow of pressurized gas emitted from the gas inlet port 82 would be orthogonal as it is introduced into the container. Fig. 1B also shows that the gas inlet port 82 is oriented in a downward direction and as a result flow of pressurized gas from the gas inlet port 82 would be in a downward direction. Thus, Pace does not disclose that either the first air gap or air feed device are “configured such that said air stream introduced

through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.”

In fact, the Examiner acknowledges “that the combined teaching of Huettlin and Pace do not explicitly teach or suggest such a configuration.” (June 3, 2008 Final Office Action page 4).

It is well settled that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Since Pace fails to disclose that either the first air gap or air feed device are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element”, any combination of Pace with WO '699 would still lack this limitation. As a result, the Examiner has not properly establish a prima facie case of obviousness.

Further, neither WO '699 nor Pace provide any evidence that one skilled in the art would modify either reference to correspond to claim 7. The present Application discloses that the claimed invention provides, *inter alia*, an air film along the deflection element that enables particles to move along the deflection element. (App. Par. [0016].) This is an improvement that is not recognized or achieved by the prior art. The device in Pace simply uses the gas inlet port 82 to introduce a pressurized gas and to pressurize the container. Pace does not teach nor fairly suggest that gas inlet port 82 is used or could be used to assist the movement of particles along a deflection element in the upper region of the container. In fact, the configuration of the gas inlet port 82 in Fig. 1B of Pace suggests that this port would dispel particles away from the upper region of the

container. As a result, Appellant respectfully submits that claim 7 is not obvious in view of WO '699 or Pace.

Simply put, neither WO '699 nor Pace discloses or remotely suggests modifying either device such that either the first air gap or air feed device are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.”

Nevertheless, the Examiner asserts that if WO '699 and Pace were to be combined, the combination would inherently provide a device with either a first air gap or an air feed device that are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.” “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’ ... ‘Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” *In re Robertson*, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

The combination of Pace with WO '699 does not inherently result in a device that satisfies claim 7 because, as noted above, Pace discloses a gas inlet port 82 or 408 is orthogonal to the container wall and provides a flow of pressurized gas in a downward direction. Thus, if the combination were to be made, such a device would also include a gas inlet port that is orthogonal to the container wall and provides a flow of pressurized gas in a downward direction. The combination would not, inherently or otherwise, provide a first air gap or an air feed device that are “configured such that said air stream

introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.”

The Examiner asserts that one skilled in the art would not incorporate the gas inlet port 82 or 408 in the manner taught by Pace, but instead apply the gas inlet port to the device in WO ‘699 in such a manner that the gas inlet port provides a flow of pressurized gas in an upward direction. Neither reference supports this conclusion and the Examiner does not identify any reason why one skilled in the art would not or could not follow teachings of Pace and incorporate a gas inlet port in the manner taught by Pace.

Second, even assuming, *arguendo*, that one skilled in the would apply the gas inlet port in Pace to the device in WO ‘699 such that there is an upward flow of pressurized gas, there is no evidence that such a combination would include all of the limitations of claim 7. Claim 7 requires “a first air gap in an upper portion of the wall”; “an air feed device for feeding an air stream through said first air gap into said container”; and that the first air gap or air feed device are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.” The Examiner offers no evidence or a reason why the resulting combined structure of WO ‘699 and Pace would include each of these elements in the specific manner claimed by claim 7. For instance, if one skilled in the art were to disregard the teachings of Pace, such a combination could just as easily apply the gas inlet port to the base of the device in WO ‘699. That combination would not provide “a first air gap in an upper portion of the wall”; “an air feed device for feeding an air stream through said first air gap into said container”; and that the first air gap or air feed device are “configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.”

Appellant respectfully submits that the Examiner's conclusions about the inherent structure of a device resulting from the combination of Pace and WO '699 are incorrect and not supported by the references.

Appellant respectfully submits that the present rejection is an unfair use of Appellant's disclosure as a roadmap to simply piece together the claimed invention from various pieces of prior art, in order to make a modification that one skilled in the art would not really make. *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337, 75 U.S.P.Q.2d 1051, 1054 (Fed. Cir. 2005). "A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007). Appellant respectfully submits that piecing together the features of claim 7 by combining Pace and WO '699 in a manner that is not taught by either reference is an improper use of hindsight bias. This is demonstrated by the fact that in order to conclude that claim 7 is obvious the Examiner must disregard the teachings of Pace, even though neither reference teaches or suggests that the gas inlet port in Pace could not be incorporated in the manner taught by Pace.

Accordingly, Appellant respectfully requests that the Examiner's rejection of claim 7 and dependent claims 10-12, 16-20, 23-25 and 29 under 35 U.S.C. 103 be reversed.

D. Claim 35 : 35 U.S.C. 103(a) rejection - Huettlin (WO00/10699) in view of Pace (US 5,180,358) in view of reasons set forth in the Examiner's Office Action of October 31, 2007.

As with claim 7, claim 35 also requires "a first air gap in an upper portion of the wall"; "an air feed device for feeding an air stream through said first air gap into said container"; and that the first air gap or air feed device are "configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tan-

gentially with respect to at least one of said wall and said deflection element.” Thus, for the same reasons given with respect to claim 7, Appellant respectfully submits that claim 35 is not obvious over WO ‘699 in view of Pace.

Further, Appellant respectfully submits that claim 35 is also not obvious over the combination of WO ‘699 and Pace because these references do not disclose a first air gap that is “either an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation.” As with claim 7, The Examiner identifies the gas inlet port 82 or 408 in Pace as satisfying this limitation.

Fig. 1B of Pace shows that the gas inlet port 82 introduces pressurized gas into the container through a single hole in the outer casing member 44. As is apparent from Fig. 1B, this hole is not “an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation” of the container. This hole is only a single point on the outer casing member and does not encompass a vertical axis of rotation.

As noted above, in order to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *CFMT, Inc. v. Yieldup Int’l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Since Pace fails to disclose “an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation” of the container, any combination of WO ‘699 and Pace would also lack this feature. As a result, the Examiner has not properly establish a prima facie case of obviousness.

Further, neither Huettlin nor Pace provide any evidence that one skilled in the art would modify either reference to incorporate this additional limitation in claim 35. As discussed above, the present Application discloses that the claimed invention provides, *inter alia*, an air film along the deflection element that enables particles to move along the deflection element. (App. Par. [0016].) In the case of claim 35, this is provided by an air gap that extends either discontinuously or continuously about the full circumference

of the container. The device in Pace, on the other hand, simply uses a single gas inlet port 82 that introduces a pressurized gas at a single point in the container to pressurize the container. Given, the fact that the gas inlet port in Pace is only used to pressurize the container, it is clear that one skilled in the art would not be motivated to modify the gas inlet port in to an “annular gap that encompasses the vertical axis of rotation.” As a result, Appellant respectfully submits that claim 35 is not obvious in view of Huettlin or Pace.

Accordingly, Appellant respectfully requests that the Examiner’s rejection of claim 35 under 35 U.S.C. 103 be reversed.

E. Claims 21 and 22 : 35 U.S.C. 103(a) rejection - Huettlin (WO00/10699) in view of Pace (US 5,180,358) as applied to claim 7 and further in view of Huettlin (DE 10104184).

Claims 21 and 22 depend on claim 7 and for at least the reasons stated with respect to claim 7, Appellant respectfully submits that these claims are also patentable over WO ‘699, Pace and DE 10104184.

Conclusion

For the foregoing reasons, Appellant respectfully submits that the claimed invention embodied in each of claims 7, 8 and 10-29, 31, and 35 is patentable over the cited prior art. As such, Appellant respectfully requests that the rejections of each of claims 7, 8 and 10-29, 31, and 35 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of claims 7, 8 and 10-29, 31, and 35.

Respectfully submitted,

/Wesley W. Whitmyer, Jr./

October 28, 2008

Wesley W. Whitmyer, Jr., Registration No. 33,558
Christopher H. Strate, Registration No. 57,376
Attorneys for Appellant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
Tel. 203 324-6155

**Claims Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/823,926**

1-6. (Cancelled)

7. An apparatus for treating a particulate material, comprising:

- a container having a base, an upright wall widening in an upward direction, and a deflection element adjoining said wall in an upper region of said container in order to deflect a direction of movement of said material;

- said wall being rotatable about a vertical axis of rotation;

- an opening for placing particulate material in to the container;

- a first air gap in an upper portion of the wall that transitions from said wall to said deflection element; and

- an air feed device for feeding an air stream through said first air gap into said container, at least one of said first air gap and said air feed device being configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.

8. The apparatus of claim 7, wherein, in said upper portion of said wall that transitions from said wall to said deflection element, there is a second air gap which is spaced apart vertically from said first air gap, at least one of said second air gap and said air feed device being configured such that an air stream fed in by said air feed device has a flow component oriented substantially in an upward direction and, in a region adjoining said second air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.

9. (Cancelled).

10. The apparatus of claim 7, wherein said deflection element has a first section which directly adjoins said wall, said first air gap being present between an upper end of said wall and a lower end of said first section.

11. The apparatus of claim 10, wherein said first section widens in an upward direction with a shape accommodating the shape of said wall in a region of said upper end of said wall.

12. The apparatus of claim 7, wherein said deflection element has a first section which directly adjoins said wall, said first air gap being present between an upper end of said wall and a lower end of said first section, and wherein said first section does not corotate with said wall.

13. The apparatus of claim 7, wherein, in said upper portion of said wall that transitions from said wall to said deflection element, there is a second air gap, which is spaced apart vertically from said first air gap, and wherein said deflection element has a first section which directly joins said wall, wherein said deflection element has at least a second section, and wherein said second air gap is arranged between an upper end of said first section and a lower end of said second section.

14. The apparatus of claim 13, wherein said second section, as viewed from a center of said container, is curved concavely, and wherein said lower end of said second section adjoins said upper end of said first section with a form fit.

15. The apparatus of claim 7, wherein, in said upper portion of said wall that transitions from said wall to said deflection element, there is a second air gap, which is spaced apart vertically from said first air gap, and wherein said deflection element has a first section which directly joins said wall, wherein said deflection element has at least a second section, and wherein said second air gap is arranged between an upper end of said first section and a lower end of said second section, and wherein said second section does not corotate with said wall.

16. The apparatus of claim 7, wherein said deflection element is air-permeable over a subregion which follows said first air gap.

17. The apparatus of claim 7, wherein a width of said first air gap is adjustable.

18. The apparatus of claim 7, wherein adjustable guide elements are arranged at said first air gap.

19. The apparatus of claim 7, wherein said base has an air gap, and wherein an air feed device is provided for said base, at least one of said air gap in said base and said air feed device for said base being configured in such a way that said air stream introduced through said air gap in said base has a flow component oriented substantially tangentially with respect to said base and toward said wall.

20. The apparatus of claim 19, wherein said base is constructed from a plurality of concentric ring elements with different diameters, which are arranged in layers partly overlapping one another radially and between which a plurality of air gaps form.

21. The apparatus of claim 7, wherein said base has an air gap, and wherein a width of said air gap in said base can be adjusted.

22. The apparatus of claim 7, wherein said base has an air gap, and wherein said air gap in said base opens automatically when being acted on with an air stream and closes when said air stream is switched off.

23. The apparatus of claim 7, wherein said base has an air gap and wherein said base has air guide elements which additionally impart to an air stream introduced through said air gap in said base a flow component oriented in a direction of rotation of said wall.

24. The apparatus of claim 7, wherein said base does not corotate with said wall.

25. The apparatus of claim 7, wherein said container has a return surface that tapers in a downward direction , on which said material deflected by said deflection element is moved back downward to said base.

26. The apparatus of claim 25, wherein said return surface is supported on said wall via a sliding ring bearing in such a way that said return surface does not corotate with said wall or rotates with a rotational speed lower than a rotational speed of said wall.

27. The apparatus of claim 7, wherein said container has a return surface which is constructed from a plurality of concentric ring elements, which partly overlap one another and between which a plurality of air gaps form.

28. The apparatus of claim 27, wherein said air gaps in said return surface are configured in such a way that an air stream introduced through said air gaps has a flow component oriented in a downward direction and substantially parallel to said return surface.

29. The apparatus of claim 7, wherein a spraying device for spraying said material with a moist covering medium is arranged in said container and has an annular gap nozzle, said nozzle being arranged upright in said container, and said covering medium and spraying air being fed into said nozzle in an upward direction, and wherein said nozzle is acted on from above with an additional air stream.

30. An apparatus for treating a particulate material, comprising:

- a container having a base, an upright wall widening in an upward direction, and a deflection element adjoining said wall in an upper region of said container in order to deflect a direction of movement of said material;

- said wall being rotatable about a vertical axis of rotation;

- an opening for placing particulate material in to the container;

- a first air gap in an upper portion of the wall that transitions from said wall to said deflection element;

- an air feed device for feeding an air stream through said first air gap into said container, at least one of said first air gap and said air feed device being configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element; and

- a second air gap which is spaced apart vertically from said first air gap, wherein said air feed device has a first feed duct for feeding a first air stream to said first air

gap, and at least a second feed duct, separated from said first feed duct, for feeding a second air stream to said second air gap.

31. The apparatus of claim 30, wherein at least one of said second air gap and said air feed device being configured such that an air stream fed in by said air feed device has a flow component oriented substantially in an upward direction and, in a region adjoining said second air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.

32. The apparatus of claim 30, wherein said deflection element has a first section that adjoins said wall and a second section that adjoins said first section, wherein said first air gap is between an upper end of said wall and a lower end of said first section, and wherein said second air gap is arranged between an upper end of said first section and a lower end of said second section.

33. The apparatus of claim 32, wherein said first section or said second section do not corotate with said wall.

34. The apparatus of claim 32, wherein said first section widens in an upward direction with a shape accommodating the shape of said wall in a region of said upper end of said wall, and wherein said second section, as viewed from a center of said container, is curved concavely.

35. An apparatus for treating a particulate material, comprising:

- a container having a base, an upright wall widening in an upward direction, and a deflection element adjoining said wall in an upper region of said container in order to deflect a direction of movement of said material;

- said wall being rotatable about a vertical axis of rotation;
- an opening for placing particulate material in to the container;
- a first air gap in an upper portion of the wall that transitions from said wall to said deflection element, said first air gap forming either an interrupted or uninterrupted annular gap that encompasses the vertical axis of rotation; and
- an air feed device for feeding an air stream through said first air gap into said container, at least one of said first air gap and said air feed device being configured such that said air stream introduced through said first air gap has a flow component oriented substantially in an upward direction and, in a region adjoining said air gap, oriented substantially tangentially with respect to at least one of said wall and said deflection element.

**Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/823,926**

No evidence of any kind, including evidence submitted under 37 CFR 1.130, 1.131 or 1.132, has been entered by the Examiner and relied upon by Appellant in the appeal.

**Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/823,926**

There are no related Appeals or Interferences. As such, there are no decisions rendered by a court or the Board in any such Appeals or Interferences.